

# CIVIL COVER SHEET

JS 44 (Rev. 12/07) (cand rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

San Francisco Baykeeper, a non-profit corporation

## DEFENDANTS

Town of Hillsborough, a municipal corporation

**(b) County of Residence of First Listed Plaintiff San Francisco**  
**(EXCEPT IN U.S. PLAINTIFF CASES)**

County of Residence of First Listed Defendant **San Mateo**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(C) Attorney's (Firm Name, Address, and Telephone Number)

**Daniel Cooper**  
Lawyers for Clean Water, Inc.  
1004 O'Reilly Avenue  
San Francisco, CA 94129

## E-filing

BZ

# ADR

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1	U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3	Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2	U.S. Government Defendant	<input type="checkbox"/> 4	Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff  
(For Diversity Cases Only) and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
<input type="checkbox"/> 110 Insurance		<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture		<input type="checkbox"/> 422 Appeal 28 USC 158		<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine		<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—	<input type="checkbox"/> 620 Other Food & Drug		<input type="checkbox"/> 423 Withdrawal		<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act		<input type="checkbox"/> 315 Airplane Product Liability	Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 28 USC 157		<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument		<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 630 Liquor Laws			<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment		<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 820 Copyrights		<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act		<input type="checkbox"/> 340 Marine	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 830 Patent		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)		<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 840 Trademark		<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits		<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 690 Other			<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits		<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<b>LABOR</b>			<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act		<input type="checkbox"/> 861 HIA (1395ff)		<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 720 Labor/Mgmt. Relations		<input type="checkbox"/> 862 Black Lung (923)		<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act		<input type="checkbox"/> 863 DIWC/DIWW (405(g))		<input type="checkbox"/> 890 Other Statutory Actions	
<b>REAL PROPERTY</b>		<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 864 SSID Title XVI		<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 865 RSI (405(g))		<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act			<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment		<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		<b>IMMIGRATION</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)		<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land		<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 463 Habeas Corpus — Alien Detainee				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions				<input type="checkbox"/> 950 Constitutionality of State Statutes	
		<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition						

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 another district (specify)    ☐ 6 Multidistrict Litigation    ☐ 7 Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
33 U.S.C. 1251, et. seq.

Brief description of cause:  
Discharging pollutants in violation of the Clean Water Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S)  
IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
'NOTICE OF RELATED CASE'.

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)  
(PLACE AND 'X' IN ONE BOX ONLY)**■ SAN FRANCISCO/OAKLAND** SAN JOSE

DATE \_\_\_\_\_

SIGNATURE OF ATTORNEY OF RECORD

8/6/08

FILE OF ATTORNEY OF RECORD

ORIGINAL

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Attorneys for Plaintiff  
 SAN FRANCISCO BAYKEEPER

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO BAYKEEPER, a non-profit  
 corporation,

Plaintiff,

v.

TOWN OF HILLSBOROUGH, a municipal  
 corporation;

Defendant.

CV 08 Civil Case No.:

3760

COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF AND  
 CIVIL PENALTIES

(Federal Water Pollution Control Act,  
 33 U.S.C. §§ 1251 *et seq.*)

**FILED**  
 AUG 6 2008  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

BZ

San Francisco Baykeeper (Baykeeper) by and through its counsel, hereby allege:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (the Clean Water Act or the CWA). This Court has subject matter jurisdiction over the parties and subject matter of this action pursuant to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C. § 1331 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

2. On June 5, 2008, Baykeeper sent a 60-day notice letter (hereinafter referred to as Notice Letter) to the Town of Hillsborough (Hillsborough) regarding Defendant's violations of the Clean Water Act and Baykeeper's intention to file suit against Defendant. Pursuant to 33 U.S.C. section 1365(b)(1)(A) of the CWA, Baykeeper also served the Notice Letters on the Administrator of the United States Environmental Protection Agency (EPA), the Administrator of EPA Region IX, the Executive Director of the State Water Resources Control Board (State Board), the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), and the United States Attorney General.

3. More than sixty days have passed since the Notice Letter was served on the Defendant and the State and Federal agencies. Baykeeper is informed and believes, and thereon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting an action to redress the violations alleged in this complaint.

4. Venue is proper in the Northern District of California pursuant to section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

**II. INTRADISTRICT ASSIGNMENT**

5. Pursuant to Local Rule 3-2(c), intradistrict assignment of this matter to the San Francisco Division of the Court is appropriate in that the events or omissions which give rise to Baykeeper's claims occurred in San Mateo County. In addition, many of Baykeeper's members reside in the City and County of San Francisco. No event or omission giving rise to Baykeeper's claims occurred in any other Division of this Court.

### 1 **III. INTRODUCTION**

2 6. The violations alleged herein concern unpermitted discharges of raw sewage and  
3 discharges from Hillsborough's sewage collection system to Hillsborough's municipal separate storm  
4 sewer system (MS4).

5 7. The specific CWA violations at issue are: (1) discharges of pollutants to waters of the  
6 United States without NPDES Permit authorization in violation of CWA § 301(a), 33 U.S.C. §  
7 1311(a); and (2) violations of National Pollutant Discharge Elimination System (NPDES) Permit No.  
8 CAS0029921, Order No. R2-2003-0023, amending Order No. 99-059 (hereinafter the MS4 Permit).

9 8. Hillsborough's sewage collection system is a satellite system where wastewater is  
10 conveyed through Hillsborough's sewer mains to wastewater treatment plants operated by the City of  
11 Burlingame and San Mateo County. Hillsborough does not own or operate a wastewater treatment  
12 plant.

13 9. The MS4 Permit regulates Hillsborough's municipal storm water discharges.  
14 Hillsborough's MS4 consists of numerous storm drain inlets that lead to underground storm drain  
15 pipes, which in turn are directed to waters of the United States.

### 16 **IV. PARTIES**

17 10. Plaintiff Baykeeper is a non-profit public benefit corporation whose mission is to protect  
18 and enhance the water quality of the San Francisco Bay-Delta Estuary and its tributaries for the benefit  
19 of its ecosystems and the surrounding human communities. Baykeeper accomplishes its mission  
20 through education, advocacy, restoration, and enforcement. Baykeeper's office is located at 785  
21 Market Street, Suite 850, in San Francisco, California.

22 11. The discharge of sewage in Hillsborough is a threat to human health and the  
23 environment, and adversely impacts Baykeeper's members' use and enjoyment of water bodies in and  
24 around Hillsborough.

25 12. Baykeeper's members use and enjoy the beaches and waters in and around Hillsborough,  
26 including, but not limited to, San Mateo Creek, Central San Francisco Bay, and the greater San  
27 Francisco Bay and its tributaries (these waters are collectively referred to as the Receiving Waters).

28 13. Baykeeper's members use and enjoy San Francisco Bay area waters for recreational,



1 scientific, aesthetic, educational, conservation and commercial purposes. Specifically, Baykeeper's  
2 members sail, swim, windsurf, picnic, fish, hike and enjoy the wildlife in and around the Receiving  
3 Waters.

4 14. Baykeeper's members' use and enjoyment of the Receiving Waters, and all tributaries to  
5 such waters (given that pollutants discharged to tributaries will flow into the Receiving Waters directly  
6 used by Baykeeper's members), has been and continues to be adversely impacted by ongoing sewer  
7 overflows and discharges of storm water contaminated with sewage to the Receiving Waters used by  
8 Baykeeper's members. The discharge of pollutants to the Receiving Waters has deleterious effects on  
9 those water bodies. Degradation of water quality and harm to aquatic life in any of the Receiving  
10 Waters impairs Baykeeper's members' use and enjoyment of those waters.

11 15. The interests of Baykeeper's members have been, are being, and will continue to be  
12 adversely affected by Defendant's failure to comply with the Clean Water Act. Baykeeper has no  
13 other adequate remedy at law.

14 16. The Town of Hillsborough is a municipality incorporated under the laws of the State of  
15 California. The Hillsborough Public Works Department (HPWD), with offices at 1600 Floribunda  
16 Avenue, Hillsborough, California, is a department of Hillsborough. The HPWD is responsible for  
17 operating and maintaining Hillsborough's sewage collection system and Hillsborough's MS4.

18 **V. STATEMENT OF FACTS**

19 **A. Hillsborough Sanitary Sewage Collection System**

20 17. Hillsborough's sewer system is over 40 years old, except for a few subdivisions  
21 constructed since the 1960s. Hillsborough's sewage collection system consists of approximately 93.7  
22 miles of main sewer line that conveys sewage to the collection system owned and/or operated by the  
23 City of Burlingame, to Burlingame Wastewater Treatment Plant, and/or to the San Mateo Wastewater  
24 Treatment Plant.

25 18. Hillsborough has spilled sewage from sanitary sewer overflows (SSOs) from its sewage  
26 collection system on at least 85 separate occasions since 2005. As the Hillsborough collection system  
27 continues to deteriorate, the number of SSOs increases.

28 19. Based upon reports submitted by Hillsborough, Baykeeper alleges that sewage from

1 SSOs has repeatedly reached the Receiving Waters through Hillsborough's storm sewer system.  
2 Hillsborough's storm sewer system discharges directly to the Receiving Waters, including San Mateo  
3 Creek and the San Francisco Bay. As such, Hillsborough's discharges of sewage to storm drains drain  
4 to the Receiving Waters.

5 20. Baykeeper is informed and believes, and thereon alleges, that Hillsborough discharges  
6 sewage to area sidewalks and streets, which exposes members of Baykeeper (as well as members of  
7 the general public) to substantial health risks.

8 21. Baykeeper is informed and believes, and thereon alleges, that - due to the lack of an  
9 adequate monitoring program to detect, report, and address SSOs and their impacts - Hillsborough has  
10 experienced significantly more SSOs than it has reported.

11 22. Baykeeper is informed and believes, and thereon alleges, that Hillsborough has taken  
12 inadequate steps to eliminate SSOs such as improving the decrepit, outdated, and poorly operated and  
13 maintained collection system. Because Hillsborough has failed to undertake appropriate and adequate  
14 measures, Hillsborough's sewage discharges will continue into the future.

15 23. Based on Hillsborough's high rate of SSOs, Baykeeper is informed and believes, and  
16 thereon alleges, that the Hillsborough sewage collection system is deteriorating and that deferral of  
17 repairs will allow the continued discharge of raw sewage to the Receiving Waters. Every day that  
18 Hillsborough has discharged and continues to discharge untreated sewage into area Receiving Waters  
19 is a separate and distinct violation of the CWA.

20 **B. Hillsborough's MS4**

21 24. The MS4 Permit regulates Hillsborough's municipal storm water discharges (as well as  
22 other MS4 systems in San Mateo County). Hillsborough's MS4 consists of numerous storm drain  
23 inlets that lead to underground storm drain pipes which in turn are directed to San Francisco Bay  
24 without treatment.

25 25. Hillsborough is one of twenty cities and towns in San Mateo County that have joined  
26 together to form the San Mateo Countywide Stormwater Pollution Prevention Program (STOPP).  
27 STOPP submitted a NPDES permit application and was granted a NPDES permit in 1993, which was  
28 reissued in 1999 and amended in 2003. STOPP's NPDES permit regulates discharges into and out of

Hillsborough's MS4. Specifically, Hillsborough is required to prohibit the discharge of non-storm water into the storm drain system. Further, the MS4 Permit contains Receiving Water Limitations, including prohibitions on discharges that cause deleterious effects on aquatic biota, wildlife, or waterfowl, or which render any of these unfit for human consumption, or cause or contribute to violations of water quality standards.

26. Raw sewage in the form of SSOs is discharged into Hillsborough's MS4 from the Hillsborough sewage collection system. Baykeeper is informed and believes, and thereon alleges, that sewage spills from Hillsborough's sanitary sewage collection system regularly enter the MS4. A separate violation of the MS4 Permit occurs each time raw sewage is discharged into Hillsborough's MS4.

### **C. Impacts to the Receiving Waters**

27. San Francisco Bay is an ecologically sensitive water body and a defining feature of Northern California. San Francisco Bay is an important and heavily used resource, with special aesthetic and recreational significance for people living in the surrounding communities. Aquatic sports are very popular in the Bay Area. The San Francisco Bay shoreline has numerous highly valued lagoons with beaches and public access that offer unique recreational opportunities for swimmers, kayakers, and windsurfers. The large-scale urbanization of the Bay Area makes these recreational and aesthetic uses even more important to the quality of life of Bay Area residents.

28. San Francisco Bay's water quality is impaired and continues to decline. The Bay's once-abundant and varied fisheries and species have been drastically diminished by pollution. Much of the wildlife habitat of the Bay has also been degraded.

29. Spills of raw sewage and discharges of sewage-contaminated storm water harm San Francisco Bay and pose a serious risk to fisheries, wildlife habitat, and human health. In addition to human waste and bacteria, SSOs contain chemicals that cause cancer or reproductive toxicity. These chemicals come from solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals, and other chemicals used by households and businesses and then discarded to sewage collection systems. High concentrations of these pollutants are typically found in discharges of raw sewage.

30. The intensive use of San Francisco Bay for commercial and sport fishing, shellfish

1 harvesting, and water-contact recreation increases the likelihood that people will come into direct  
2 contact with spilled sewage and the pollutants it contains. Sewage pollution also affects people who  
3 eat fish caught in the Bay. Toxic chemicals are concentrated in the San Francisco Bay's food web,  
4 which means that contaminants absorbed by plankton are magnified in fish and birds farther up the  
5 food chain and ultimately transferred to human consumers. Contamination of fish is particularly  
6 damaging to minority and poor people, who eat a greater-than-average amount of fish from the Bay.

7 31. SSOs that do not directly reach San Francisco Bay still pose significant health risks by  
8 depositing raw sewage in public streets, public buildings and grounds, and private yards and homes.  
9 SSOs contain large concentrations of bacteria, viruses, mold spores, and protozoa. Exposure to raw or  
10 partially treated sewage can cause a variety of health problems, including gastroenteritis, respiratory  
11 illness, ear, nose, and throat problems, and skin rashes. Mold spores can establish an ecological niche  
12 when they are carried onto a homeowner's property during a sanitary sewer overflow, creating an  
13 ongoing health risk from chronic exposure. Residential sewage overflows diminish property values  
14 and impose severe nuisance on local residents.

## 15 **VI. LEGAL BACKGROUND**

### 16 **A. The Clean Water Act**

17 32. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant  
18 into waters of the United States unless the discharge complies with various enumerated sections of the  
19 CWA. Among other things, section 301(a) prohibits discharges that violate or are not authorized by  
20 the terms of a NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

21 33. Clean Water Act section 402(p), 33 U.S.C. § 1342(p), establishes a framework for  
22 regulating municipal storm water discharges under NPDES permits. Section 402(p) of the CWA  
23 requires a NPDES permit for storm water discharges from a MS4 to waters of the United States. 33  
24 U.S.C. § 1342(p).

25 34. Section 505(a)(1) of the CWA provides for citizen enforcement actions against any  
26 "person," including individuals acting in their official state capacity, for violations of NPDES permit  
27 requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§1365(a)(1) and 1362(5).

28 35. An action for injunctive relief under the CWA is authorized by 33 U.S.C. section



1365(a). Violators of the CWA are also subject to an assessment of civil penalties of up to \$27,500 per day per violation of the CWA for violations of the CWA occurring prior to March 15, 2004 and \$32,500 for all violations occurring on or after March 15, 2004. 33 U.S.C. § 1319(d) and 40 C.F.R. §§ 19.1 - 19.4.

36. The CWA also authorizes the award of reasonable attorneys' fees and costs (including witness and consultant fees). 33 U.S.C. § 1365(d).

#### **B. MS4 Permit Requirements**

37. Clean Water Act section 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating municipal storm water discharges under NPDES permits. Section 402(p) of the CWA requires a NPDES permit for storm water discharges from a municipal separate storm sewer system to waters of the United States. Hillsborough's MS4 Permit regulates Hillsborough's municipal storm water discharges (as well as other MS4 systems in San Mateo County). Hillsborough's MS4 consists of numerous storm drain inlets that lead to underground storm drain pipes, which in turn are directed to San Francisco Bay.

38. Hillsborough's MS4 Permit contains certain absolute prohibitions. Discharge Prohibition A.1 of Hillsborough's MS4 Permit prohibits the discharge of non-storm water (material other than storm water) into the Hillsborough MS4.

39. Further, the MS4 Permit contains Receiving Water Limitations, including prohibitions on discharges that cause deleterious effects on aquatic biota, wildlife, or waterfowl, or which render any of these unfit for human consumption, or cause or contribute to violations of water quality standards. See MS4 Permit, Receiving Water Limitations, B.1e and B.2

### **FIRST CAUSE OF ACTION**

#### **Claim Against Hillsborough for Discharges of Pollutants Without a NPDES Permit in Violation of the Clean Water Act, 33 U.S.C. § 1311(a)**

40. Plaintiff realleges, as if set forth fully herein, each and every allegation contained in the preceding paragraphs.

41. Hillsborough, as owner and operator of the Hillsborough sewage collection system, has been discharging and continues to discharge untreated sewage from the Hillsborough sewage

1 collection system into the Receiving Waters since at least June 5, 2003. At no point has Hillsborough  
2 obtained a permit that authorizes the discharge of untreated sewage from the Hillsborough sewage  
3 collection system to waters of the United States. Therefore, each and every discharge of untreated  
4 sewage from Hillsborough's collection system is a discharge in violation of CWA section 301.

5 42. Hillsborough has violated the discharge prohibition of CWA section 301(a) by  
6 discharging untreated sewage in the form of SSOs without NPDES permit authorization to waters of  
7 the United States on at least 85 separate occasions. Each occasion is a separate CWA violation and  
8 these violations are continuing.

9 43. Plaintiff Baykeeper is informed and believes, and thereon alleges, that Hillsborough has  
10 been underreporting the number of SSOs that take place from Hillsborough's collection system and  
11 that Hillsborough lacks an adequate monitoring program to detect, report, and address SSOs and their  
12 impacts. Baykeeper is informed and believes, and thereon alleges, that significantly more SSOs will  
13 be discovered through this enforcement action. Each additional SSO will be a separate CWA  
14 violation.

15 44. Hillsborough has taken inadequate affirmative steps to eliminate these CWA violations  
16 by improving its outdated, poorly operated, and poorly maintained sewage collection system. Because  
17 Hillsborough has failed to undertake appropriate and adequate measures, the CWA violations realleged  
18 herein will continue in the future.

19 45. Each day since June 5, 2003, that Hillsborough has discharged, and continues to  
20 discharge, untreated sewage and other pollutants to waters of the United States without a NPDES  
21 permit authorizing such discharges is a separate and distinct violation of CWA section 301(a), 33  
22 U.S.C. § 1311(a).

23 46. By committing the acts and omissions alleged above, Hillsborough is subject to an  
24 assessment of civil penalties pursuant to CWA sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and  
25 1365(a).

26 47. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C.  
27 § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
28 Plaintiff and the citizens of the State of California, for which harm they have no other plain, speedy, or

adequate remedy at law.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**SECOND CAUSE OF ACTION**

**Claim Against Hillsborough for Non-Storm Water Entering Municipal Separate Storm Sewer System in Violation of MS4 Permit and Clean Water Act, 33 U.S.C. § 1311(a)**

48. Plaintiff realleges, as if set forth fully herein, each and every allegation contained in the preceding paragraphs.

49. Discharge Prohibition A.1 of the MS4 Permit prohibits the discharge of non-storm water (material other than storm water) into the Hillsborough MS4.

50. Hillsborough has discharged or allowed the discharge of non-storm water into Hillsborough's MS4 in the form of SSOs from the Hillsborough sewage collection system. SSOs that enter Hillsborough's MS4 are not storm water but rather raw or inadequately treated sewage.

51. Hillsborough has reported to the Regional Board discharges of non-storm water to the Hillsborough MS4 system on at least 11 separate occasions. However, Baykeeper is informed and believes, and thereon alleges, that Hillsborough has discharged non-storm water in the form of SSOs to Hillsborough's MS4 on more occasions than it has reported.

52. Hillsborough violates the MS4 Permit and section 301(a) of the CWA every time a SSO from the Hillsborough sewage collection system enters Hillsborough's MS4. Accordingly, each day since June 5, 2003 that Hillsborough has failed to comply with the MS4 Permit is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

53. By committing the acts and omissions alleged above, Hillsborough is subject to an assessment of civil penalties pursuant to CWA sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and 1365(a).

54. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no other plain, speedy, or adequate remedy at law.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**RELIEF REQUESTED**

55. Wherefore, Baykeeper respectfully requests that this Court grant the following relief:

a. A Court order declaring Hillsborough to have violated and to be in violation of section 301(a) of the CWA, (33 U.S.C. § 1311(a)), for their discharges of untreated sewage to waters of the United States, without a permit;

b. A Court order declaring Hillsborough to have violated and to be in violation of section 301(a) of the CWA, (33 U.S.C. § 1311(a)), for violating the substantive and procedural requirements of the MS4 Permit and the Clean Water Act;

c. A Court order enjoining Hillsborough from discharging untreated sewage to waters of the United States without a permit, in violation of section 301(a) of the CWA, (33 U.S.C. § 1311(a));

d. A Court order enjoining Hillsborough from violating the substantive and procedural requirements of the MS4 Permit and the Clean Water Act;

e. A Court order assessing civil penalties against Hillsborough of up to \$27,500 per day per violation of the CWA for violations of the CWA occurring prior to March 15, 2004 and \$32,500 for all violations occurring on or after March 15, 2004, for each violation of the CWA pursuant to sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and 1365(a).

f. A Court order awarding Baykeeper its reasonable costs of suit, including attorney, witness, and consultant fees, as provided for by sections 309(d) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365(a);

g. Award such other relief as this Court may deem appropriate.

LAWYERS FOR CLEAN WATER, INC.



Daniel Cooper  
Drevet Hunt  
Attorney for Plaintiff  
San Francisco Baykeeper

Dated: August 6, 2008